

CHESHIRE EAST COUNCIL

LICENSING COMMITTEE

Date of meeting: 14 January 2009

Report of: Sheela Dutton, Principal Solicitor, Congleton Borough Council

Title: Hackney Carriage Zoning

1.0 Purpose of Report

- 1.1 The purpose of the report is to set out proposals for the transfer of the hackney carriage licensing function of each existing authority into the new authority by allowing the formation of 'zones' which correspond to the current districts
- 1.2 The report proposes that the hackney carriage licensing function will continue unchanged within the zones for a period of time into the new authority in order to allow proper research and consultation on the complex areas of law, practice and policy involved in hackney carriage licensing.

2.0 Decision Required

The Committee is asked to;

- 2.1 adopt the course of taking no action at this time and thereby allowing the creation of hackney carriage zones on vesting day
- 2.2 commit to a thorough review of the hackney carriage licensing function in the first year of the new authority

3.0 Financial Implications for Transition Costs

- 3.1 None

4.0 Financial Implications 2009/10 and beyond

- 4.1 None

5.0 Legal Implications

- 5.1 Hackney carriage zones will be legally automatically 'created' if no action to 'de-zone' is taken before vesting day. The varying tariffs, byelaws, vehicle conditions and licensing policies of the 3 former authorities will continue to have effect within those districts until such time as the new authority is in a position to put forward proposals to replace them with common Cheshire East tariffs, byelaws,

conditions and policies

- 5.2 There is insufficient time for the research and consultation necessary for the harmonisation of all matters in relation to hackney carriage licensing to take place before vesting day, and therefore, in order for the new authority to carry out the hackney carriage licensing function without being open to legal challenge no action should be taken at this stage and the creation of zones allowed

6.0 Risk Assessment

- 6.1 As In 5 above

7.0 Background and Options

- 7.1 The Committee is asked to keep in mind when considering this report the main differences in the way that hackney carriage and private hire vehicles operate; these being that hackney carriages can ply for hire and stand on ranks whereas private hire vehicles must be pre booked. The authority cannot control the fares that private hire operators can charge and cannot control the number of private hires operating in its area. Private hire licences are regulated by conditions imposed by the authority whereas hackney carriages are also regulated by bye laws.
- 7.2 These differences mean that the licensing of Hackney Carriages is somewhat more difficult than the licensing private of hires and harmonisation of the policies and practices of the 3 districts will require extensive research and consultation, especially in the areas detailed below.
- 7.3 As it is impossible to complete all of this research and consultation before vesting day, it is recommended that this is not even attempted; rather, the Committee gives it's commitment to a thorough review of the hackney carriage licensing function during the first year of the new authority to enable it to make fully informed decisions about the practices and policies to be adopted, including whether the zones should be retained *permanently* (Government advice is against zoning although some authorities retain them as they consider zoning to provide a better service to the public)
- 7.4 The main areas of practice and policy where extensive research and consultation are need before harmonisation can take place are:**

7.4.1 Restricting the number of hackney carriage licences issued

Currently, out of the three districts, only Congleton limit the number of Hackney Carriage licences issued. Legally, numbers can only be limited when surveys have been carried out within the district, which show that there is no significant unmet demand for hackney carriages in the area. The last such survey carried

out in Congleton is now out of date. (Three years is regarded as the maximum reasonable period between surveys*).

Government advice* is that authorities should not limit numbers as being in the best interests of the travelling public.

Although a survey of un-met demand is not required in order to lift the limitation on numbers, it the High Court held in 2006 that full *consultation* is required

7.4.2 The creation of a new bye-law

Unlike private hire licences, conditions on hackney carriage licences are largely governed by bye-laws.

Although the current bye-laws of the 3 districts are very similar, being based on a standard model, a new bye law would have to be created by the new authority in order to review, update and harmonise the existing ones.

The making of bye-laws requires extensive consultation and confirmation by the Secretary of State. This process (in particular the confirmation) could not be completed before vesting day.

7.4.3 Specifying the type of vehicle to be licensed

Unlike the other 2 districts Congleton issues new vehicle licences only to M1 Type Approved vehicles that are purpose built to carry wheelchairs. The decision to do this was based on concerns about the testing undertaken on manufacture of certain types of vehicle compared to the testing of modified vehicles.

However Crewe licences vehicles that are modified to carry wheelchairs and Macclesfield has no policy on wheelchair accessibility

In order to consider the best way forward into the new authority a full report on the technical aspects of the different types of vehicles and the way they are tested should be considered and full consultation with the trade carried out.

When considering this aspect of vehicle licensing the provisions of the Disability Discrimination Act 1995 (as amended by the Disability Discrimination Act 2005) along with the Code of Practice issued by Disability Rights Commission in 2006** must be taken into account.

7.4.4 Hackney carriage fares

The setting of hackney carriage fares is the only area in which local authorities control the earning capacity of an individual or a business by fixing the maximum amount that they can charge for their service.

Statute requires consultation and advertising before new fares are introduced and this process must therefore be carried out before fares can be harmonised across the 3 districts.

7.5.5 The use of ranks

If zoning does take place this will mean that hackney carriage's licensed for a particular district will only be able to ply for hire and sit on ranks in that district. There are balances here to be made between the earning capacity of a proprietor/driver and the service to the public.

Again, research and consultation is needed before decisions whether to keep zones further into the life of the new authority is needed.

8 Overview of Day One, Year One and Term One Issues

To act within the law on day one and to fully review the hackney carriage licensing function by the end of year one.

9 Reasons for Recommendations

Not only will they ensure that the new authority will be acting legally on vesting day, but will allow sufficient time to undertake a full review of the function. It will also raise the awareness within the Hackney carriage trade across the new authority that the status quo may well not remain.

For further information:

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Background Documents:

**Taxi and Private Hire Licensing; Best Practice Guidance - Department for Transport 2006*

*** Provision and Use of Transport Vehicles; Statutory Code of Practice. Disability Rights Commission 2006*